

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2008-093290

04/11/2012

COMMISSIONER ALYSSON H. ABE

CLERK OF THE COURT

L. Hart

Deputy

IN RE THE MATTER OF
NICHOLAS LEVI DWYER

NICHOLAS LEVI DWYER
1728 E ELLIS DRIVE
TEMPE AZ 85282

AND

JESSICA DANIELLE DEWITT

JESSICA DANIELLE DEWITT
PO BOX 579
PIMA AZ 85543

LADELL TOMA

LADELL TOMA
2869 W IRONWOOD DR
CHANDLER AZ 85224

DOCKET-FAMILY COURT-SE
FAMILY COURT SERVICES-CCC
JUDGE RYAN

UNDER ADVISEMENT RULING
JUDGMENT ENTERED

The Evidentiary Hearing in this matter was held on April 9, 2012. Following the Evidentiary Hearing, the Court took the issues of Grandmother's make up visitation and sanctions under advisement. The Court has since reviewed the testimony presented, the case history, and the pleadings filed. The Court now makes the following findings and enters the following orders:

On February 18, 2011, Father and paternal Grandparents (Intervenors) entered into a grandparent visitation agreement concerning the child.

LET THE RECORD REFLECT the Court takes judicial notice of Father's current parenting time orders, filed February 18, 2009 which state: "Father will have parenting time

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from Thursday at 12:00 p.m. through Tuesday at 12:00 p.m. every other week. The exchanges will take place in Globe, Arizona or as the parties arrange.”

LET THE RECORD REFLECT:

1. Mother is the custodial parent and currently resides in Safford, Arizona.
2. Father has court-ordered parenting time and resides in Tempe, Arizona.
3. Paternal Grandmother and Step-Grandfather have court-ordered visitation time and reside in Chandler, Arizona.

THE COURT FINDS that pursuant to the parties’ agreement, Grandparents have court-ordered visitation time with Maddison every other Friday. It should be noted that the Grandparents’ visitation work in conjunction with Father’s parenting time. Grandparents visitation with Maddison may be expanded to include additional days (additional to the alternating Fridays), depending upon Mother’s and Father’s respective schedules. At one time, Grandparents were exercising visitation with Maddison on alternating Thursdays.

THE COURT FURTHER FINDS that the last time that Grandparents exercised visitation with Maddison was on or about January 2, 2012. Father explained that Grandparent’s visitation was missed due to his vacation time with Maddison which occurred sometime in January 2012. The Court finds that apart from Father’s January vacation schedule, visitation failed to continue on the alternating Fridays, pursuant to the visitation orders. The Court finds that Grandparents attempted, to no avail, to arrange for their visitation time.

THE COURT FINDS that Father is in contempt of Court for failure to comply with a valid court order allowing Grandparents to exercise visitation with Maddison of which he had knowledge. Father willfully deprived Grandparents of visitation pursuant to the parties’ agreement regarding visitation adopted by Judge Ryan on February 25, 2011.

IT IS ORDERED pursuant to the visitation orders, clarifying and enforcing said agreement in the following way:

ALTERNATING FRIDAYS

Grandparents shall have visitation with Maddison every other Friday from 6:00 a.m. to 4:00 p.m., commencing Friday, April 20, 2012. The exchange shall be as follows: Grandparent(s) shall pick the child up at Father’s residence at 6:00 a.m. and Father shall pick the child up at Grandparents’ residence 4:00 p.m.

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Pursuant to the orders entered February 18, 2012, in the event that Grandparents do not have opportunity to exercise their alternating Friday and that Grandparents do not waive said visitation, then makeup time shall be scheduled. The makeup time, unless otherwise agreed upon shall occur during the same week of the missed Friday visitation. Additionally, any waiver of visitation time shall be reduced to writing communicated between parties via email.

VISITATION DAYS OTHER THAN ALTERNATING FRIDAYS

Thursday visitation is not court ordered, however if the parties resume with a Thursday visitation schedule, it shall take place as follows:

IT IS ORDERED that Grandmother shall pick up Maddison at a designated location in Globe, Arizona. Grandmother and Mother shall designate the venue for the exchange. If parties cannot agree on the location, Mother shall designate the venue (in Globe) for the exchange. If a Thursday exchange occurs, the exchange of the child shall take place at 9:00 a.m. and shall continue until 4:30 p.m. Father will pick the child up at Grandparents' residence at 4:30 p.m.

COMMUNICATION PRIOR TO THE EXCHANGE

Grandparent(s) is expected to arrive promptly at Father's residence to pick up Maddison and Father is expected to have Maddison ready for the curbside exchange. Father and Grandparent(s) need not communicate with each other prior to the exchange. **EXAMPLE:** Neither party needs to request of the other whether or not he/she will be present for the exchange. The presumption is that both sides will be prompt, present, and that the exchange will occur at the designated time and location. Parties are only expected to communicate with one another if one or both sides cannot be present.

COMMUNICATION DURING THE VISITATION

Absent exigent circumstances, communication between Grandparents and Father shall be limited during the time the child visits with Grandparents. Father may place a call to Maddison at 12:00 noon on the Fridays that Grandparents are exercising visitation. Given the child's age (4 years old), the phone call shall be brief and need not last longer than ten (10) minutes.

A cold/flu or minor illness on the part of the child does not constitute good cause for Mother or Father to keep Grandparents from exercising visitation with Maddison. Illness where Mother or Father describes the child as "sick" or "not feeling well" is not reason alone to keep

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Grandparents from seeing the child. At the very least, Mother or Father shall produce a doctor's note to Grandparents documenting the physical condition of the child. Absent a serious or life-threatening illness as described by a doctor, Grandparents shall exercise visitation.

IT IS FURTHER ORDERED granting Judgment in favor of Grandmother and against Father in the amount of **\$281.00** for service and court costs incurred in bringing this matter to an enforcement conference. Father is to pay said judgment **DIRECTLY** to Grandmother by no later than June 1, 2012. This payment is not to be forwarded to the Clerk of Court or Support Payment Clearinghouse. If payment is not timely made interest shall accrue at the legal rate from the Judgment date.

IT IS ORDERED setting this matter for **Review Hearing on August 16, 2012 at 2:30 p.m. (45 minutes allotted)** before **Comm. Alysson Abe** at the following location to review Father's compliance with Grandparents' visitation orders:

**Maricopa County Superior Court
Southeast Court Facility
Courtroom 304
222 East Javelina
Mesa, AZ 85210-6201**

As of July 1, 2012, due to judicial rotation, the Honorable Veronica Brame will be assuming the caseload in this division that is currently being handled by the Honorable Alysson Abe.

This represents a change in judicial assignment and both parties are on notice thereof in accordance with Rule 6 of the Arizona Rules of Family Law Procedure and Rule 42 of the Arizona Rules of Civil Procedure.

IT IS ORDERED signing this minute entry as a formal order of this Court pursuant to Rule 81, *Arizona Rules of Family Law Procedure*.

DATED this 11th day of April, 2012.

/s/ HONORABLE ALYSSON ABE

ALYSSON ABE
COMMISSIONER OF THE SUPERIOR COURT

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All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.

**PLEASE NOTE: IMPORTANT INFORMATION RE: CD/VIDEOTAPE
FEE CURRENTLY IN EFFECT**

This Courtroom uses an electronic recording system for the record. All CDs and videotapes will be provided by the Court, regardless of when the copies are made. A fee of \$20.00 will apply to all copies requested, either on the day of the hearing or for hearings recorded on an earlier date. Forms to request a recording of a proceeding are available in the Self-Service Centers and in the JAVS and FTR courtrooms.

If a party wants a court reporter to record a proceeding in this Court, a written request must be filed at least seven (7) days before the commencement of the proceedings.

A person requesting a daily copy CD or videotape must complete the appropriate request form and pay the applicable fee at the Self-Service Center. Upon payment of the appropriate fees through the Self-Service Center, a receipt will be issued which shall then be presented to Court staff for preparation of the CD or videotape in the customary manner.

A person wanting a copy of a hearing from a previous occasion must contact Ken Crenshaw at 602-506-7100.